



WESTFIELD-WASHINGTON TOWNSHIP  
BOARD OF ZONING APPEALS

August 9, 2016  
1607-VS-14  
Exhibit 1

**Petition Number:** 1607-VS-14

**Subject Site Address:** 18435 North Union Street (the "Property")

**Petitioner:** Ben Knock (the "Petitioner")

**Request:** The petitioner is requesting a Variance of Development Standard for a reduction in the Side Yard Building Setback Line for an Accessory Building (Article 6.1(D)(1)(b)(ii)) in the MF1: Multi-family Low Density District.

**Current Zoning:** MF1: Multi-family Low Density District

**Current Land Use:** Residential

**Approximate Acreage:** 0.42 acres

**Exhibits:**

1. Staff Report
2. Location Map
3. Existing Conditions Exhibit
4. Site Plan Exhibit
5. Proposed Garage Exhibit

**Staff Reviewer:** Jesse M. Pohlman, Senior Planner

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**OVERVIEW**

**Location:** The subject property is 0.42 acres +/- in size and located at 18435 North Union Street (see **Exhibit 2**) within the Maple Park Subdivision. The Property is zoned the MF1: Multi-family Low Density District. The Property currently contains a single-story single-family home and detached garage (see **Exhibit 3**). The surrounding properties include property owned by The Wesleyon Church District of Central Indiana to the north, single family homes to the east and south, and Westfield High School to the west across Union Street.

**Variance Request:** The Petitioner is requesting this variance to allow a detached garage to be constructed in the location of the existing detached garage, as generally illustrated on the Site Plan Exhibit (see **Exhibit 4**) and Proposed Garage Exhibit (see **Exhibit 5**).

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## **SUMMARY OF VARIANCE**

The Petitioner is requesting this variance to allow a 1,080 square foot +/- detached garage (24' x 45') to be constructed in the location of the existing 440 square foot +/- detached garage (20' x 22'), as generally illustrated on the Site Plan Exhibit (see **Exhibit 4**) and Proposed Garage Exhibit (see **Exhibit 5**).

The detached garage is an Accessory Building<sup>1</sup>. Accessory Buildings are permitted if the use of the Accessory Building is incidental to the permitted and primary use<sup>2</sup>. The primary use of the property is single-family residential. Although the property is zoned the MF1 District, the existing single-family use and detached garage are considered Legal Non-Conforming<sup>3</sup> because the single-family dwelling and detached garage were built (1960)<sup>4</sup> prior to zoning being effective in Washington Township (1977).

Article 9.5(B)(8) of the UDO states that “[r]emoval or destruction of a Structure in which a Legal Nonconforming<sup>5</sup> Use existed shall result in the property losing its legal nonconforming status and shall not thereafter be resumed.”

As a result, this variance is required in order to allow the petitioner to demolish the existing detached garage, which would cause it to lose its Legal Nonconforming status, and then reconstruct a new detached garage. In addition, a Variance of Development Standard for a reduction in the Side Yard Building Setback Line is requested.

The applicable standards are as follows:

Article 6.1(D)(1)(b)(ii) Accessory Use and Building Standards; Building Location; Lots in Subdivisions; Side and Rear Setbacks: An Accessory Building over two hundred (200) square feet shall meet the minimum Side and Rear Yard Building Setback Lines of the underlying Zoning District, except as otherwise established by this Article.

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<sup>1</sup> Chapter 12 of the UDO defines “Building, Accessory” as “[a] subordinate building or structure, the use of which is incidental to and customary in connection with the Principal Building or use and which is located on the same Lot with such Principal Building or use and is under the same ownership. Buildings which are portable and do not have permanent foundations are also classified as Accessory Buildings, but shall not require an Improvement Location Permit.”

<sup>2</sup> Article 6.1(A) of the UDO states that “Accessory Buildings shall be permitted in all Zoning Districts in accordance with this Article. Accessory Uses shall be permitted in each Zoning District when determined by the Director that the use is incidental to the permitted and primary use, and that the use is consistent and compatible with the intent of the Zoning District in which it is located. Accessory Uses shall be conducted in accordance with this Article.”

<sup>3</sup> Article 9.2 of the UDO states that “Legal nonconforming is different than illegal nonconforming because a legal nonconforming property is caused by an amendment to this Ordinance, not as a result of a change to the property, that has resulted in the property no longer conforming to the policies and standards of the applicable Zoning District. When this situation occurs, then the property is deemed legal nonconforming and shall be subject to the terms of this Article.”

<sup>4</sup> Hamilton County Assessor’s Office property card identifies the structures were built in 1960.

<sup>5</sup> Chapter 13 of the UDO defines “Nonconforming Building (or Nonconforming Structure)” as “[a] Building, Structure, or portion thereof, which uses does not conform to the regulations of the Zoning District in which it is located.”

Article 4.10(H)(2) MF1: Multi-Family Low Density District; Minimum Building Setback Lines<sup>6</sup>; Side Yard<sup>7</sup>: 20 feet

The existing detached garage is five (5) feet from the south property line. The new detached garage is proposed to be located along the same Side Yard Building Setback Line of five (5) feet. As a result, the request is to reduce the Side Yard Building Setback Line from twenty (20) feet to five (5) feet.

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**COMPREHENSIVE PLAN**

The 2007 Westfield-Washington Township Comprehensive Plan generally identifies US31 Highway Corridor as the “Employment Corridor” land use classification. This property falls near the outer extent of that corridor and could also be considered part of the “Suburban Residential”, “New Suburban” or “Downtown” land use classifications.

The “Downtown” area was further studied in 2008 after the formation of the Grand Junction Task Group (the “GJTG”). The study resulted in an amendment to the Comprehensive Plan known as the Grand Junction Master Plan and Addendum, adopted in 2009, and then subsequently the adoption of the Grand Junction Implementation Plan (the “Implementation Plan”), an amendment to the Comprehensive Plan adopted in 2013 (collectively, the “Grand Junction Plan”).

The Grand Junction Plan identifies a long term vision as well as land use and financial investment goals for the intermediate and short terms. The centerpiece of the Grand Junction Plan includes creating public gathering spaces with key public investments opportunities to include: Grand Junction Plaza (currently being designed), new civic facilities, extended trail system and street network, enhanced stormwater management, and signature gateway developments.

The studied land use component of the Grand Junction Plan identified several sub-districts. Although this property falls just outside of the Grand Junction District, the existing character of the properties in this area and the desired character for the northern areas of the Grand Junction Sub-District aligns with the “Neighborhood Sub-District”, characterized as follows within the Implementation Plan<sup>8</sup>:

The Neighborhood Sub-district includes several existing neighborhoods and residential subdivisions that are near to the downtown core (e.g., Newby’s Westfield Heights; North Union Heights; Sleepy Hollow; Pine Hollow; John Kerr Subdivision; Kenyon Subdivision; Southridge Subdivision; and Cherry Wood Estates Subdivision). The Sub-district also includes the Westfield Intermediate School campus; the Westfield Middle

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<sup>6</sup> Chapter 13 of the UDO defines “Building Setback Line” as “[a] line parallel to a Right-of-way line, edge of a stream, or other Lot Line established on a parcel of land or Lot for the purpose of prohibiting construction of a building or structure in the area between such line and the Right-of-way, stream bank, or other Lot Line.”

<sup>7</sup> Chapter 13 of the UDO defines “Yard, Side” as “[a] Yard extending across the full depth of the Lot, the depth of which is the least distance between the Side Lot Line and the Side Yard Building Setback Line.”

<sup>8</sup> 2009 Grand Junction Implementation Plan, page 23.

School campus; the Christ United Methodist campus; and the Union Bible College campus.

These areas are included in the Neighborhood Sub-district because they are the residential and institutional properties which populate and serve the Grand Junction area. It is unlikely that these areas will redevelop in the near future; however, the potential for future redevelopment does exist, and for this reason, a clear vision for the redevelopment of the downtown neighborhoods should be developed.

The specific objectives for the Neighborhood Sub-District, as prioritized in the Implementation Plan, include: (i) provide places for people to live within, or within walking distance of, downtown; (ii) develop vision and standards for future redevelopment of the sub-district; and (iii) develop standards for existing structures in the sub-district.

The City is currently working on the prioritized objectives of the Implementation Plan; however, the specific objectives noted above for this particular Sub-District are still in progress.

With respect to the “Suburban Residential” land use classification, among other uses, the Comprehensive Plan<sup>9</sup> notes a variety of housing types, including subdivisions, at a variety of densities, along with recreational uses is desired.

The Comprehensive Plan notes the basic policy of this land use classification is to preserve and protect the stability and integrity of the area as it fills to consist primarily of single-family residences. Other policies include: (i) ensure that infill development is compatible in mass, scale, density, materials, and architectural style to existing development; (ii) promote the protection of the existing suburban character of the area; (iii) encourage only compatible infill development on vacant parcels in existing neighborhoods as a means of avoiding sprawl; and (iv) new development should be permitted only upon a demonstration that it will not alter the character of the area, and will not generate negative land use impacts.

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## **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the August 9, 2016, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.

**Conditions:** The UDO<sup>10</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject

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<sup>9</sup> Westfield-Washington Township Comprehensive Plan, Suburban Residential (pg. 38).

<sup>10</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO<sup>11</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

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#### **DEPARTMENT COMMENTS**

**If the Board is inclined to approve the variance,** then the Department recommends the following findings:

Recommended Findings for Approval:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:**

**Finding:** It is unlikely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community because the resulting improvements are generally consistent with existing improvements and will otherwise comply with or exceed the applicable standards. In addition, the requested variance is generally consistent with the side yard setbacks of the existing building on the property.

- 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:**

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<sup>11</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

**Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance should not have a negative impact on surrounding properties because: (i) the proposed improvement will enhance the value of the subject property; (ii) the improvements will otherwise comply with or exceed the applicable standards; and (iv) the approval of the variance will allow for the continued use and improvement of the property in a manner substantially consistent with the quality and character of the surrounding area and Comprehensive Plan.

**3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.**

**Finding:** Strict adherence to the zoning ordinance would result in the inability to improve the property, as proposed, in accordance with the Unified Development Ordinance. The primary residential use of the property is otherwise permitted as Legal Nonconforming Use by the Unified Development Ordinance and the proposed improvements would otherwise comply with the Unified Development Ordinance.